APPENDIX

SPECIFICATION OF ERRORS TO BE URGED

The Wayne Circuit Court of Michigan, and the Michigan Supreme Court by its decision of affirmance, erred:

1.

In holding valid the Michigan Public Act cited herein under "Questions presented," cited by the Michigan Supreme Court as the basis of said determination, and challenged at earliest opportunity by defendant appellant appearing specially to contest jurisdiction as being repugnant to the United States Constitution, Article XIV of Amendments, Section 1, guarantying due process and equal protection of the law.

2.

In converting a civil suit in chancery, prosecuted by a private citizen, into a criminal proceeding directed toward an uncompensated contribution and imprisonment, and maintained by public officials sustained out of general taxes, and thus subjecting defendant appellant to a criminal prosecution depriving him of his property and liberty upon no matter of record within a decade involving him in wrong, for no offense against the public known to the law, without any charge whatsoever of such offense against him either made or pretended, with no hearing either permitted or pretended thereon, and compelling him to submit to inquisition without protection of counsel, and to submit the matters involving him to the decision of a tribunal operating under no established or known

procedure, and without benefit of such due process as is accorded to persons accused of crime and such impartiality as has been determined to be due process by the Constitution of Michigan "in every criminal prosecution" —Art. II, Sec. 19, requiring "an impartial jury"; which said conversion is repugnant to said Fourteenth Amendment, and is in violation of the Thirteenth Amendment to the United States Constitution prohibiting involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted," and contrary to Section 1 of the 14th Amendment, and contrary to Art. II of Sec. 14 of the Ordinance of the Northwest Territory.

3.

In subjecting defendant appellant for his sole opportunity to make a record unto an official in whom were merged respecting said cause the functions both of advocate and hearing officer under said state statute, and who was otherwise involved in said cause by partial and financial interest in the outcome of said litigation, and uncurbed by any known practice of regular procedure from imposing upon the defendant appellant the whim and discretionary caprice of said official, contrary to said Fourteenth Amendment.

4.

In depriving defendant appellant of the protection of public trial before an unbiased, unprejudiced, disinterested, and impartial tribunal by regular and known rules of procedure, contrary to said Fourteenth Amendment.

5.

By concealing from the defendant matter presented the trial court in his cause against him, until after the deter-

mination of said cause and entry of judgment, contrary to said Fourteenth Amendment.

6.

By subjecting defendant for determination of facts to his antagonist as judge.

7.

By dismissing without hearing the petition of Joseph Metzinger for custody and services of his son past 12 years of age, duly filed, served, and answered, which stood, after dismissal of motion on behalf of Louise Metzinger seeking reference to the Friend of the Court Edward Pokorny, ready praeciped for trial in open circuit court.

8.

Imposing an unreasonable and unjust penalty upon defendant appellant incident to his appeal to the Wayne Circuit Court to test the reasonableness of the Friend of the Court's demand for unauthorized funds.

9.

By leaving public policy respecting the effect of judicial procedure on stability of family life as a national prerequisite for a sufficient defensive population a generation hence against threatened perils from across the Pacific Ocean wholly unattended.

QUESTIONS PRESENTED

A.

With reference to Michigan Public Act 412 of 1919 as amended, cited in its opinion filed in this cause by the Michigan Supreme Court as 3 Comp. Laws, 1929, Sec. 12783 *et seq.* as amended, and as Stat. Ann. 1944 Cum. Supp. Sec. 25.171 *et seq.*, challenged below (R. 49-50) as repugnant to Section 1 of the Fourteenth Amendment to the United States Constitution, but held below to be a valid authorization of the determination appealed:

1. May the defendant appellant be subjected to condemnation by a tribunal created in avoidance of additional judges, and for the relief of over-burdened metropolitan courts, but operating under no regular established and by no known rules assuring him of protection by due process from the whim or interested discretion of said tribunal?

2. May the defendant appellant be condemned by a tribunal so created and uniting in the same official the functions, respecting defendant appellant's cause, of advocate and umpire, prosecutor and judge?

3. May the defendant appellant be compelled to submit to a reference of his cause to a public officer required by said statute in said manner to advocate the interest of an adverse party (minor son) determined by said statute to deserve the public charity of such tax-supported legal aid, and required by said statute in the same matter to function as a master in chancery, and upon whose recommendation being tendered the court the defendant appellant is not permitted to make any record whatsoever in the court

upon the merits either by examination there of witnesses, or cross-examination of witnesses against him, or otherwise?

4. May the cause of defendant appellant be referred by statute and court rule, for the sole and only hearing permitted, to an officer granted under such statute a practical monopoly and financial interest in the barratrous maintenance of litigation restricted almost entirely to divorce and domestic relations matters deemed by the legislature to be deserving of public charity in the nature of legal aid?

5. May the subterfuge of concealing a criminal prosecution under the title and procedure of private litigation between private citizens be used to deprive the defendant of the special protections due under a frankly criminal prosecution in the entitled name of The People?

B.

With reference to the further denial of equal protection of the law and due process:

6. May the defendant appellant in a proceeding entitled strictly between private litigants be condemned to involuntary servitude through maintenance of said action by the licensed barratry of public officials salaried out of general public taxes upon no charge notified to him as authorizing prosecution in the public interest, and not notified to be prosecuted by public officials in the public interest, and upon which no hearing whatsoever is permitted or pretended?

7. May the defendant appellant be condemned by a proceeding deliberately and confessedly concealing from

him in accordance with "general practice" representations of fact and argument obtained by the trial court with intentional secrecy and "heavily" relied upon by it in arriving at its determination?

8. May defendant appellant be subjected to condemnation under such vague, uncertain, unknown, and changable practice as to deny him all assurance of due process, by action depriving him of chance to appear specially contesting the jurisdiction of the court, with right to be clearly and specifically informed of the court's ruling thereon, and opportunity thereafter on a specific notice to make record at a public hearing on the merits before an impartial judicial tribunal?

9. May defendant appellant be denied a public trial on the merits before an impartial judicial tribunal?

10. May defendant appellant be condemned without a public hearing by due process before an impartial judicial tribunal to an involuntary servitude wholly uncompensated, in favor of an able-bodied son now past fifteen years of age?

11. Is due process of law denied when the only foundation by way of process is the supposed retained jurisdiction under a proceeding concluded by final decree over ten years previously?

12. May a petition duly standing at issue by answer, after a motion for reference to a disqualified master being rendered *res adjudicata* by dismissal on argument, thereafter be dismissed without hearing by the court in charge thereof despite a praecipe ordering same for trial, for mere lack of a substitute hearing officer satisfactory to the caprice of the court itself?

13. May the court penalize the defendant appellant for his attempt to test the reasonableness of an official demand for unauthorized funds by adding thereto upon the taking of necessary steps to accomplish that test?

14. Where defendant appellant is subjected by public officials salaried out of general public taxes to a discrimination for the purpose of prosecuting him ostensibly in the public interest on pretext of a wrong nowhere charged in the record, and nowhere of record, unless perhaps if at all by the pleadings in strictly private litigation finally concluded more than a decade prior, yet supposed by said officials to authorize more than a decade thereafter a second jeopardy for his uncompensated further amercement to be enforced by alternative imprisonment at the discretion of a court on plea of contempt; may such defendant appellant, notwithstanding that speedy public trial and a disinterested jury, and protection against inquisition and double jeopardy are guaranteed as a matter of due process northwest of the Ohio River relative to criminal (discriminatory) proceedings, be disallowed against his timely objection any due process incident to and required for the defendant in every prosecution for crime?

15. This defendant appellant having appeared in the trial court only specially (R. 27; R. 33; R. 45; R. 59; R. 70) to plead to the jurisdiction over his person, and hearing thereon having been denied (R. 33; R. 71); and inquisition having been imposed lacking protection by legal counsel (R. 33-41); and ruling upon that occasion being entered, "heard and submitted" (R. 39); and thereafter a further order being entered, without process to defendant except a letter with copy thereof to the attorney entered on special appearance, referring said cause (R. 42)

to a master in chancery[1] brushing aside said plea to the jurisdiction and the further plea objecting to the said referee as disqualified by interest (R. 27-31; 44-55); and thereafter without general appearance of defendant appellant in any manner having been entered, waiver of the plea to jurisdiction over his person "in no place" (R. 71) appearing; and further objections being offered based[2] on the personal bias and prejudice disqualifying the trial judge by virtue of his interest established under the challenged statute; and no order (R. iv, v) having been entered at any time vouchsafing determination of the issue of jurisdiction over the person so to give defendant appellant not generally represented (R. 27) an official, specific, duly served (R. 112) notice after determination of the issue of jurisdiction requiring him to make his defense on the merits; and no hearing in the trial court or notice thereof to the defendant appellant being even pretended beyond said ruling "heard and submitted" (R. 39; R. iv-v; R. 27; R. 33); and the court having ruled of the defendant appellant that he "demands the right to make a record in this Court. This demand has been denied" (R. 71); and said Wayne Circuit Court having determined and entered final judgment (R. 73-4)

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[1]Called Friend of the Court, and, by his brief *amicus curiae* on appeal (in the Michigan Supreme Court,—praeciped as a part of the record on appeal herewith) conceded through ignoring entire discussion in appellant's brief (likewise praeciped) to have been established in control of important election help and political machinery required by the judge for his periodic re-election to office as well as otherwise and financially interested (R. 21-25) in the outcome of said litigation, and functioning in said cause under appointment by the Governor of Michigan as public prosecuting attorney permanently substituted for the constitutional officer to advocate (R. 34; 38; 39; 42; 56; 94; 113) for the infant real party plaintiff in interest against defendant appellant.

[2]R. 2, Sec. I-f; R. 97; and at B. 79-80 and 223-234, for more extended discussion concerning said elected judge.

based upon representations of fact and argument concerning said issue of jurisdiction deliberately concealed in accordance with "practice . . . generally" (R. 90) from defendant appellant and his counsel (R. 56-64; 88-92) coincident with similar determination of the merits; has defendant appellant's objection on appeal that he has by such steps been denied a hearing before an unbiased, impartial, and disinterested tribunal been sufficient to authorize ruling said determination void for denial of due process?

16. With reference to the national military defense issue, is barratrous maintenance by a tax-supported agency, licensed by the challenged statute to a practical monopoly over a field of litigation largely restricted to matters of divorce and domestic relations, upon pretext of charitable public concern, a maintenance of private litigation contrary to necessary public policy?

FRIEND OF THE COURT ACT

Friend of the Court Act: Act 412 of 1919, as amended by Act 306 of 1939

TITLE

An act for the protection of dependent minor children and to compel enforcement of chancery decrees where there are minor children in divorce cases, who are liable to become public charges and are not properly cared for by their custodians, and to enforce the payment of amounts decreed them in a court of chancery, and to enforce all interlocutory and decretal orders; to provide for the appointment of a friend of the court to act in such cases and to provide for the rights, powers and duties of such friend of the court.

Sec. 1. It shall be the duty of the circuit judge or circuit judges of the respective counties in the state of Michigan, to recommend a duly qualified and licensed attorney as a "Friend of the Court" who shall be appointed by the governor, each of whom shall act as such "Friend of the Court" in the judicial circuit in which he shall have been appointed for the purpose of enforcing payment of all delinquent payments duly ordered and decreed by said circuit courts for the support, maintenance and education of dependent minor children, in causes pending or where parents have been divorced, where said dependent minor children for any reason are not receiving proper care, maintenance and education and are liable to become a public charge and are not properly cared for by their custodian: *Provided,* That such "Friend of the Court" need not be a duly qualified and licensed attorney, but may be any person competent for such work, and may be the same person who is probation officer or assistant probation officer in such counties: And *provided further,* That if such "Friend of the Court" is not a duly qualified and licensed attorney, the circuit judge of such county may appoint any duly qualified and licensed attorney to assist such "Friend of the Court" when such circuit judge shall deem legal assistance necessary, and such attorney so appointed shall be paid such sum or sums as the circuit judge shall fix and determine as reasonable for the services performed, from the general fund of such counties by the county treasurer thereof upon orders drawn by the county clerk subject to the proper audit by the board of supervisors or board of county auditors. The governor shall have power to remove such officer for incompetency, misconduct or failure to carry out the orders of the court, or neglect of any duty imposed by the court. Such removal may be made upon the certification of the judge or judges of the court under

whom such "Friend of the Court" acts, which certificate shall set forth that a full hearing has been had before said judge or judges and as a result thereof, the court has determined that such "Friend of the Court" is incompetent or has been guilty of misconduct, neglect of duty, or refusal to carry out the order of the court.

Sec. 2. It shall be the duty of the "Friend of the Court" in their respective counties to examine all records and files in divorce cases where interlocutory orders or decrees have been rendered and there are dependent minor children and ascertain if said dependent minor children regularly receive the various and definite amounts decreed them by their respective circuits, that the same is applied for their support, maintenance, education and betterment, and that said dependent children are properly cared for by their custodian. To bring into court when necessary by citation or otherwise all persons who are delinquent in making said payments or who have the care, custody, support, maintenance and education of said dependent minor children and to ascertain if said dependent minor children are receiving the proper care, maintenance and education and whether they are liable to become a public charge.

Sec. 3. Said "Friend of the Court" shall have full power by citation or other order duly issued by the circuit court to compel the attendance of witnesses to take testimony and to do each and everything necessary, including the taking of contempt proceedings, to collect any and all delinquent payments due to said dependent minor children, to make recommendations to the circuit courts for the betterment of the conditions of said dependent minor children and ascertain the moral and general conditions surrounding said dependent minor children and shall report the result of his findings in writing to the circuit court. In counties having a population of not less than 250,000 the

judges of each of the several judicial circuits throughout the state of Michigan may refer to the "Friend of the Court" for investigation and recommendation all motions in divorce, separate maintenance and annulment cases. Said "Friend of the Court" shall assume responsibility for the enforcement of all preliminary and interlocutory as well as decretal orders in such causes. The court may designate the "Friend of the Court" to act as referee in the taking of testimony of witnesses and hearing the statement of parties upon pending motions and such "Friend of the Court" so designated shall take and subscribe the oath of office provided by constitution and shall have authority to administer oaths and examine witnesses and shall make a written, signed report to the court containing a summary of the testimony and a recommendation for the court's findings and disposition of such matters.

WAYNE CIRCUIT COURT RULES

7—*(e) Divorce Causes: praecipes, motions to be referred to the Friend of the Court.*

All praecipes, noticing motions in divorce, separate maintenance and marriage annulment cases shall be filed with the Friend of the Court, appointed Deputy County Clerk for that purpose. All praeciped motions in such causes shall be referred to the Friend of the Court for investigation and recommendation before being passed on by the Court. Any attorney, desiring to object to the recommendation of the Friend of the Court, shall serve a written notice of such objection, stating briefly the reasons therefor, both upon the office of the Friend of the Court and upon counsel for the opposite party at least one day before the hearing of the matter. The Friend of the Court shall

assume responsibility for the enforcement of all preliminary and interlocutory as well as decretal orders in such causes.

All orders to show cause to enforce interlocutory as well as decretal orders shall be assigned to the Judge originally making the same.

7—*(i) Motions, relating to order or decrees, to be assigned to judge who made order or decree.*

All motions to quash, dismiss, modify, or change in any way any order heretofore made by any judge (except orders to show cause with restraining order) and also proceedings to punish for contempt of any order or decree shall be assigned to the judge originally making the order or entering the decree. Whenever any motion has been assigned to a judge for hearing, such judge shall retain jurisdiction of such motion until finally decided, provided, however, that this last provision shall not apply to motions in divorce, separate maintenance, and marriage annulment cases filed with the Friend of the Court under subdivision (e) of this rule in which no hearing in whole or in part has been had.

OPINION ON PETITION BY PLAINTIFF WIFE PRAYING FOR MODIFICATION OF DECREE TO CAUSE DEFENDANT TO PAY MEDICAL AND HOSPITAL EXPENSES FOR MINOR CHILD

(Filed February 16, 1943)

Honorable Ira W. Jayne,
Circuit Judge,

Thursday, February 11, 1943.

Before the Honorable Ira W. Jayne, Circuit Judge, on Thursday, February 11, 1943, at Detroit, Michigan.

Appearances: Hulett & Coash, Attorneys for Plaintiff; Royal D. Rood, Attorney for Defendant.

On June 29, 1942, this plaintiff's petition was filed, setting forth that she was unable to give the child the needed medical attention from her own resources and that the $5.00 a week ordered for its support from the defendant was not sufficient to defray these extraordinary expenses; that she has already incurred $86.00 in hospital bills, $157.00 in doctor bills; the child is cross-eyed and in urgent need of medical care.

The defendant countered with a petition praying for the custody of the child, praying,

> "that this court of Chancery should not continue in force the provisions of the said divorce decree invading the common-law right of this petitioner to have the care, custody and obedience of his

child so long as responsibility for his support continues."

A considerable time has elapsed because of the insistence of Mr. Rood, the attorney for the defendant, in denying the jurisdiction of the Court to avail itself of the services of the Friend of the Court, which finally culminated in this Court, which granted the original decree making an order referring

> "to Edward Pokorny, Friend of the Court, as Referee, for the purpose of taking any testimony that may be offered in support of or against this motion and that the said Friend of the Court file a written and signed report to the Court containing a summary of the testimony and a recommendation for the Court's findings and disposition."

The Friend of the Court has made his report as a result of this order which is by reference made a part of this opinion, and from which it appears that although given ample notice to appear that the defendant on advice of his counsel Mr. Rood, refused to appear and testify.

Testimony of the plaintiff wife was taken and the Friend of the Court recommends first: "that the decree of divorce be modified and as modified that the defendant husband be required to pay the sum of $299.50 in weekly installments of $10.00 per week, which shall be in addition to the $5.00 per week allowance. Second: that the defendant husband be required to pay not to exceed $5.00 per week for necessary medical expenses, including treatment for child's crossed-eye. Third: that the defendant husband pay an attorney fee of $50.00."

To all of this Mr. Rood has filed objections which resolve themselves into one issue only, and that is the

constitutionality of the Friend of the Court act and the right of the Court to make an order of reference for the taking of testimony. In no place does he challenge the Findings of Fact of the Friend of the Court, as Referee, as to the physical condition of the child, as to its need for medical services.

The only controverted fact then is as to the defendant's earnings. He states "he is currently employed only three days per week at approximately $26.00 per week," against which we have the record of the man's earnings from January to September, 1942, several months after the filing of this petition, showing an average of $52.09 per week.

In addition, it is incorporated in this opinion that the Court saw the boy and examined him. It is obvious to a layman that the child badly needs medical attention, lacking which there is strong probability of his being crippled for life and handicapped by weak and badly crossed eyes, both of which afflictions should lend themselves to comparatively inexpensive treatment.

Has this Court the power to refer to the Friend of the Court's motions, such as this, for the purpose of taking testimony before recommendation? Such is the Statute. Such is the established practice of this Court. Such an order was made in this case. The defendant was given ample notice to appear. On advice of counsel he did not appear and demands the right to make a record in this Court. This demand has been denied and an order may be entered increasing the order for support to $15.00 per week until an additional sum of $300.00 has been paid and then $10.00 per week so long as the child needs additional medical care or until the further order of the Court.

The defendant is ordered to pay to the Friend of the Court for the plaintiff's counsel an additional sum of $50.00 forthwith; the defendant having failed to comply with the rules and practices of the Court in bringing on his motion for modification, the same is dismissed without prejudice.

I. W. Jayne,
Circuit Judge.

Dated: Thursday, February 11, 1943.

ORDER MODIFYING DECREE AND DENYING MOTION FOR CUSTODY OF CHILD

(Filed March 5, 1943)

At a session of said Court held in the Wayne County Building in the City of Detroit on the — day of February, A. D. 1943.

Present: Honorable Ira W. Jayne, Circuit Judge.

The petition of the plaintiff filed in the above cause for modification of the final decree heretofore entered in said cause, praying for the modification of said decree so as to require the defendant to pay medical and hospital expenses incurred and to be incurred by her for the care of the minor child of said parties, and also the petition filed by the defendant praying for the custody of said child having come on to be heard and this Court having referred said matter to the Friend of the Court as referee for the purpose of taking any testimony that might be offered in support of or against said petitions;

And it appearing from the report of the Friend of the Court that the defendant, although given ample notice to appear before the said Friend of the Court, on advice of his counsel refused to appear and testify,

And it further appearing to the Court that said plaintiff has incurred in hospital bills and doctors' bills the sum of Two Hundred Ninety-nine and 50/100 ($299.50) Dollars, and that said minor child is obviously in need of further medical attention, lacking which there is strong probability of his being crippled for life and handicapped by weak and crossed eyes:

And it further appearing that the defendant failed to comply with the rules and practices of this Court in bringing on his petition for modification of said decree.

Now therefore, upon motion of Hulett & Coash, attorneys for the plaintiff in the above cause:

It is ordered that the motion of said defendant for modification of said decree be and the same is hereby dismissed without prejudice.

And it is further ordered that the decree heretofore entered in this cause be and the same is hereby modified, increasing the order for support of the minor child of said parties to Fifteen ($15.00) per week until an additional sum of Three Hundred ($300.00) Dollars has been paid, and then Ten ($10.00) Dollars per week so long as the said minor child needs additional medical care, or until the further order of the Court.

And it is further ordered that defendant pay the sum of Fifty ($50.00) Dollars forthwith as attorney fee to Hulett & Coash, attorneys for the plaintiff.

And that, except as herein modified, the said decree heretofore entered in the above entitled cause shall remain in full force and effect.

I. W. Jayne,
Circuit Judge.

O. K. as to substance.

Edward Pokorny,
Friend of the Court.

OPINION OF MICHIGAN SUPREME COURT
(As published in 17 N. W. 2d 203)

Metzinger v. Metzinger—No. 28
January 2, 1945

Supreme Court of Michigan

1. Constitutional Law—305

Where petition was filed in original divorce proceeding to modify amount defendant was required to pay for support of minor child, and defendant was timely served and had notice of time and place of hearing, defendant was not denied due process of law because no writ or rule to plead was issued or served on defendant. Comp. Laws 1929, § 12783 *et seq.*, as amended.

2. Divorce—309

Defendant was not deprived of hearing before trial court on plaintiff's petition in divorce proceedings to modify amount defendant was required to pay for support of minor child by original decree by reference of petition to friend of the court, where defendant was afforded a full and fair hearing as to action court would take in considering recommendations of friend of the court. Comp. Laws 1929, § 12783 *et seq.*, as amended.

3. Divorce—309

Where original divorce decree as to maintenance of the minor child of the parties expressly provided that it was until further order of the court, such decree was not *res judicata* of subsequent proceedings requiring defendant to pay additional sum for medical and hospital expenses for the child.

4. *Amicus curiae—1*
Constitutional law—305

The statute relating to appointment of friend of court, purpose, qualifications, assistants, and removal is not unconstitutional as denying due process. Comp. Laws 1929, § 12783, as amended.

5. *Divorce—309*

The friend of the court was not disqualified from hearing plaintiff's petition to modify divorce decree as to amount defendant was required to pay for support of minor child by reason that he was "financially interested" on ground that he received compensation for his services as a public officer. Comp. Laws 1929, § 12783 *et seq.*, as amended.

Appeal from Circuit Court, Wayne County, in Chancery; Ira W. Jayne, Judge.

Divorce action by Louise Metzinger against Joseph Metzinger, wherein a decree was entered granting plaintiff a divorce and awarding her custody of minor child and requiring defendant to pay $5 per week for support of child. The plaintiff filed a petition seeking amendment of the decree requiring defendant to pay additional sums on account of medical and hospital expenses incurred in caring for the child, and the defendant filed a petition seeking an amendment of the decree giving him custody of the minor child. From a modification of provisions in divorce decree increasing amount defendant was required to pay for support of child, the defendant appeals.

Affirmed.

Before the Entire Bench, except Butzel, J.

Royal D. Rood, of Detroit, for appellant.

Max Hulett, of Farmington, for appellee.

Edward Pokorny, of Detroit, amicus curiae.

North, Justice.

This is an appeal from a modification of the provisions in a divorce decree relative to the care and maintenance of a minor child. In January 1931, plaintiff was granted a decree of divorce from defendant on the grounds of cruelty and nonsupport. Plaintiff was given the custody of Edward Metzinger, a minor child of the parties, until he became 16 years of age or until the further order of the court, and defendant was required to pay $5 per week for the care and support of this child. There is no complaint concerning defendant's compliance with the order requiring the weekly payments.

In June 1942, plaintiff filed a petition in the cause by which she sought amendment of the decree requiring defendant to pay additional sums on account of medical and hospital expense theretofore incurred in excess of $250 in caring for the minor child and such other sums as prospectively would be needed until the child attained the age of 17 years. At the time of filing this petition the minor was 12 years of age. The petitioner alleged that she was unable to pay for these services from the meager earnings of her then employment, that the defendant was "well able and should be compelled by this Court to bear the expense of these out-of-the-ordinary medical and hospital expenses for his child," and that the minor child "now has, and has had, various ailments."

Defendant was served with a copy of the petition and notice of the time and place of hearing. He did not answer; but instead filed a petition by which he sought an amendment of the decree giving him custody of the minor child. This latter petition was answered by plaintiff.

In accordance with the local practice and the statute in such case made and provided the proceedings was referred to the friend of the court. Defendant, acting through his counsel, refused to appear before the friend of the court, and instead insisted upon a hearing before the court. The friend of the court proceeded to investigate and consider the matters referred to him and filed his recommendations with the trial court. At this stage of the proceedings defendant's counsel appeared specially before the trial court "for the purpose of presenting objections to the Recommendation of the Friend of the Court in re petition filed in the above entitled cause by Louise Metzinger denying jurisdiction of the court over the person of defendant Joseph Metzinger in the matter of said petition to grant any of said recommendations," basing such objections upon reasons theretofore served upon plaintiff's counsel and upon the friend of the court. The circuit judge heard the parties relative to their respective contentions and caused to be entered an amendment to the decree whereby, in substantial accord with the recommendations of the friend of the court, the amount defendant was required to pay for support of the minor child of said parties was increased "to Fifteen ($15.00) per week until an additional sum of Three Hundred ($300.00) Dollars has been paid, and then Ten ($10.00) Dollars per week so long as the said minor child needs additional medical care, or until the further order of the Court;" and the payment by defendant of a $50.00 at-

torney fee to plaintiff's counsel. In other respects the decree theretofore entered was ordered to "remain in full force and effect." By this latter provision the relief sought by defendant's petition was in effect denied. However, in the trial court's opinion the following appears: "the defendant having failed to comply with the rules and practices of the Court in bringing on his motion for modification, the same is dismissed without prejudice."

[1-4] In the reasons and grounds in support of this appeal taken by defendant he asserts that since incident to the hearing of plaintiff's petition no "writ or rule to plead" was issued or served on defendant, and since by reference to the friend of the court defendant was denied a hearing in court, he was thereby denied due process. We find no merit in this contention. The petition was filed in the original divorce proceedings in which there was involved the care, custody and maintenance of a minor child. That was the only phase of the original case brought again to the attention of the court by plaintiff's present proceedings. It was a phase of the original divorce case over which the court retained a continuing jurisdiction. The provision as to the care and maintenance of the minor child in the original decree expressly provided that it was "until the further order of this court." The provisions in the original decree were not res adjudicata of the instant proceedings. As above noted, defendant was timely served with a copy of plaintiff's petition and notice of the time and place of hearing. This is all that is required under the rules and practice of courts in this jurisdiction. Further, defendant was not, by the reference to the friend of the court, deprived of a hearing before the trial court. Instead a full and fair hearing before the court was afforded defendant as to

the action the trial court would take in considering the recommendations of the friend of the court and such testimony as the trial court might see fit to take. The practice and procedure followed in the instant case is fully justified by statutory provisions. See 3 Comp. Laws 1929, § 12783 *et seq.*, as amended (Stat. Ann. 1944 Cum. Supp. § 25.171 *et seq.*) We are not in accord with defendant's contention that for the reason hereinbefore noted—*i.e.*, denial of due process, the cited statute is unconstitutional.

[5] Appellant also assigns as reasons in support of his appeal that the circuit judge and the friend of the court were disqualified by reason of "personal bias and prejudice," and because the friend of the court was "financially interested," since he receives compensation for his services as a public officer. These and other reasons assigned in support of this appeal have been given careful consideration and, under the record in the instant case, found to be without merit.

The decree as amended by the trial court is affirmed, with costs of this Court to appellee.

Starr, C. J., and Wiest, Bushnell, Sharpe, Boyles, and Reid, JJ., concur.

ORDERS OF THE MICHIGAN SUPREME COURT

At a session of the Supreme Court for the State of Michigan, held at the Supreme Court room, in the Capitol, in the City of Lansing, on the second day of January, in the year of our Lord, one thousand nine hundred and forty-five.

Present the Honorable Raymond W. Starr, Chief Justice; Walter H. North, Howard Wiest, Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Associate Justices.

This cause having been brought to this court by appeal from the Circuit Court for the County of Wayne, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged, and decreed by the Court, that the decree of the Circuit Court for the County of Wayne, in Chancery be and the same is hereby in all things Affirmed.

And it is further ordered, adjudged and decreed that the plaintiff do recover of and from the defendant, her costs to be taxed.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court room, in the Capitol, in the City of Lansing, on the twentieth day of February, in the year of our Lord, one thousand nine hundred and forty-five.

Present the Honorable Raymond W. Starr, Chief Justice; Walter H. North, Howard Wiest, Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Associate Justices.

A motion for rehearing having been heretofore sub-